Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Inquiry Concerning Deployment of	)	**GN Docket No. 19-285**
Advanced Telecommunications	)	
Capability to All Americans in a	)	
Reasonable and Timely Fashion	)	
	)	

COMMENTS OF
ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

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Table of Contents

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COMMENTS OF ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits its comments in response to the *NOI* initiating the next annual assessment of whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.[1]

I. INTRODUCTION AND SUMMARY

In comments in response to the annual broadband deployment inquiry commenced last year, ITTA observed that the *Fourteenth NOI* was coming amidst "a time of opportunity" regarding next steps for deploying fixed broadband to unserved areas.[2] Just over a year later, ITTA is pleased to commend the Commission for having swung the door wide open when opportunity knocked. Myriad Universal Service Fund (USF) programs providing efficient subsidies to spur the deployment of fixed broadband to unserved areas where the business case for such deployment would not exist absent such subsidies are moving forward. The

[1] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fifteenth Broadband Deployment Report Notice of Inquiry, FCC 19-102 (Oct. 23, 2019) (*NOI*).

[2] ITTA Comments, GN Docket No. 18-238, at 1 (Sept. 17, 2018); *see Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report Notice of Inquiry, 33 FCC Rcd 8386 (2018) (*Fourteenth NOI*).

Commission also has taken or initiated numerous other actions towards fulfillment of the statutory goal of deployment of advanced telecommunications capability to all Americans,[3] such as launching the Digital Opportunity Data Collection, firming up its broadband performance measurements framework, and unleashing large swaths of spectrum for wireless broadband deployment.

It is against this formidable backdrop that the Commission has commenced its annual inquiry into the state of availability of advanced telecommunications capability to all Americans. Despite all the progress the Commission has made in recent years towards fulfilling the national policy goal of universal broadband access by all Americans, in all regions of the nation, the fact remains that over 21 million Americans – the vast majority of them living in rural areas or on Tribal lands – continue to lack access to advanced telecommunications capability.[4] Deployment facilitated by USF high-cost program funding mechanisms, as well as by other funding programs designed to foster broadband deployment,[5] needs to come to fruition to enable the Americans heretofore left stranded on the wrong side of the digital divide to benefit from 21st Century services and opportunities. While aggressive speed goals are laudable – and should be pursued in the longer term – now is not the time to raise the stakes by reinterpreting what speed benchmark constitutes "advanced telecommunications capability."

The Commission should maintain the current speed benchmark of 25 Mbps download and 3 Mbps upload (25/3 Mbps) for fixed broadband, insofar as it enables "advanced"

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[3] *See* 47 U.S.C. § 1302 (codifying, within Title 47 of the United States Code, Section 706 of the Telecommunications Act of 1996 (Section 706)).

[4] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2019 Broadband Deployment Report, 34 FCC Rcd 3857, 3858, 3873, paras. 2, 33 (2019) (*2019 Report*).

[5] *See, e.g.*, Rural Utilities Service, U.S. Department of Agriculture, Broadband Pilot Program ReConnect Program, 84 Fed. Reg. 16839 (Apr. 23, 2019) (announcing application windows for RUS Rural e-Connectivity Pilot Program).

telecommunications capability. The Commission also should continue to evaluate broadband deployment examining both fixed and mobile services. With those parameters, as well as the Commission's analysis focusing on the progress made year-over-year in the deployment of broadband services, the Commission may find that advanced telecommunications capability is being deployed in a reasonable and timely fashion, notwithstanding the continual lag of broadband deployment in rural and Tribal areas. Nevertheless, as the *NOI* concedes, until all Americans have access to advanced telecommunications capability, the Commission must aggressively maintain its efforts to close the digital divide.

II. THE COMMISSION SHOULD MAINTAIN THE 25/3 Mbps SPEED BENCHMARK FOR FIXED BROADBAND

The *NOI* proposes to continue use of the current 25/3 Mbps benchmark for fixed broadband in assessing whether fixed services provide advanced telecommunications capability.[6] ITTA supports this proposal.

Retaining the 25/3 Mbps benchmark will provide for alignment of Commission policies and practices. 25/3 Mbps was the "baseline" performance tier for the Connect America Phase II (CAF II) auction, and is likewise proposed to be for the Rural Digital Opportunity Fund (RDOF) auction.[7] In the *Rate-of-Return Budget Order*, the Commission offered additional funding to Alternative Connect America Cost Model (A-CAM) I support recipients in exchange for increased 25/3 Mbps deployment obligations, made A-CAM II offers in return for obligations to build out broadband networks providing speeds of 25/3 Mbps, and adopted new deployment

[6] *See NOI* at 4, para. 11.

[7] *See Connect America Fund; ETC Annual Reports and Certifications*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, 1626, para. 10 (2017); *Rural Digital Opportunity Fund; Connect America Fund*, Notice of Proposed Rulemaking, 34 FCC Rcd 6778, 6785, para. 23 (2019) (*RDOF NPRM*).

obligations for legacy carriers requiring speeds of 25/3 Mbps rather than 10/1 Mbps.[8] It was confusing when, barely one month after establishing 10/1 Mbps as the speed threshold for price cap carriers to accept a state-level commitment for model-based funding for broadband deployment,[9] the Commission declared 25/3 Mbps to be the speed benchmark for evaluating whether advanced telecommunications capability is being deployed in a reasonable and timely manner.[10] With 25/3 Mbps currently being routinely used as a benchmark for fixed broadband in the universal service context, raising the benchmark to a new level at this time is not advisable.

25/3 Mbps broadband continues to enable myriad advanced features, functions and applications. In establishing the 25/3 Mbps benchmark, the Commission found that availability of advanced telecommunications capability necessitated access to broadband services capable of providing that throughput in order to accommodate demand, for example, for online video services, high definition (HD) video streaming, video chat, and online gaming.[11] As the Commission concluded earlier this year in the *2019 Report*, 25/3 Mbps "continues[s] to meet the

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[8] *See Connect America Fund et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11894-95, para. 3 (2018) (*Rate-of-Return Budget Order*).

[9] *See Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, Report and Order, 29 FCC Rcd 15644, 15649, para. 15 (2014) (*December 2014 Connect America Order*).

[10] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1403-08, paras. 45-55 (2015) (*2015 Report*).

[11] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 721, 722, paras. 49, 53 nn.165, 176 (2016) (citing *2015 Report*, 30 FCC Rcd at 1394, 1399-1401, paras. 27, 37-40).

statutory definition of advanced telecommunications capability; that is, such services 'enable[] users to originate and receive high-quality voice, data, graphics, and video telecommunications.'"[12] Furthermore, the Commission found that 25/3 Mbps "reflects current consumer demand for high-speed broadband services," and that the adoption rate for higher-speed services does not yet support an increase in the threshold.[13]

The calculus remains the same today. Section 706's definition of "advanced telecommunications capability" to encompass "high-quality" telecommunications does not require a failing grade if the broadband service is not capable of providing each and every new function and application to reach the market. Nor does it command an assessment of whether the "most" advanced telecommunications capability is being deployed on a reasonable and timely basis.[14] By any reasonable account, the features, functions, and applications enabled by 25/3 Mbps broadband still qualify as "advanced" and "high-quality."

There are also pragmatic reasons why the Commission should retain 25/3 Mbps as the benchmark. As an analytical matter, because 25/3 Mbps was the benchmark in annual broadband reports since 2015, maintaining it as such in the context of the current inquiry provides the best vehicle for truly evaluating the progress of broadband deployment.[15] If the Commission were to change the benchmark now, it would not provide the reference point that is the essence of a "benchmark."[16] Of course, this is not to suggest that the definition of what constitutes "advanced" remain static merely for the sake of longitudinal analysis. However,

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[12] *2019 Report*, 34 FCC Rcd at 3862, para. 13 (citing 47 U.S.C. § 1302(d)(1)).

[13] *Id.*

[14] *Id.* at 3863, para. 14 ("the definition of advanced telecommunications capability in section 706 nowhere suggests that 'advanced' necessarily means the highest quality service possible").

[15] *See id.* at 3862, para. 12 ("In maintaining the benchmark of 25/3 Mpbs, we emphasize the benefit in maintaining a consistent approach to the section 706 inquiry from report to report.").

[16] *Id.* at 3863, para. 15 ("use of a benchmark . . . makes it easier to track progress over time").

given that the current 25/3 Mbps benchmark still qualifies as "advanced" and "high-quality" by any reasonable account, maintaining that benchmark now will assist the Commission in fulfilling its statutory obligation to "determine" whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.

In addition, as a matter of policy, especially in light of the myriad advanced functionalities enabled by 25/3 Mbps broadband service, the Commission should maintain that benchmark as a deployment target for the millions of Americans who remain unserved by advanced telecommunications capability. As ITTA has emphasized before, in an environment of finite funding for broadband deployment, the Commission's primary policy should be to maximize the coverage breadth of a good broadband service.[17] At this juncture, an enhanced benchmark, such as 100 Mbps downstream, "exceeds investment and deployment capabilities and far exceeds consumer demand."[18] In furtherance of the principle "'to connect the maximum

[17] *See* ITTA Comments, WC Docket Nos. 10-90, 14-58, and 14-259, at 2-4 (July 21, 2016) (ITTA CAF II Weights Comments); *see also December 2014 Connect America Order*, 29 FCC Rcd at 15649-50, para. 17 ("Our objective with high-cost support is to extend broadband-capable infrastructure to as many high-cost locations as efficiently as possible, and at the same time ensure that we are best utilizing the funds that consumers and businesses pay into the universal service system."); *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3132, para. 120 (2016) (in order to utilize available universal service funds "to extend broadband to high-cost and rural areas where the marketplace alone does not currently provide a minimum level of broadband connectivity, the Commission has emphasized its desire to 'distribute universal funds as efficiently and effectively as possible'" (quoting *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17673, para. 20 (2011)); Commissioner Michael O'Rielly, Federal Broadband Infrastructure Spending: Potential Pitfalls (Feb. 1, 2017), https://www.fcc.gov/news-events/blog/2017/02/01/federal-broadband-infrastructure-spending-potential-pitfalls ("focusing on artificial speeds diverts attention and resources from establishing service to those lacking any broadband service. . . . [W]e should strive to ensure that broadband of a realistic speed and quality is available for as many as possible, knowing it will be far exceeded in most circumstances.").

[18] *2019 Report*, 34 FCC Rcd at 3863, para. 14.

number of people with the limited dollars available under [the Commission's] budget,'" the Commission "'should buy fewer Lamborghinis and more Chevys.'"[19]

III. THE COMMISSION SHOULD EVALUATE BROADBAND DEPLOYMENT EXAMINING BOTH FIXED AND MOBILE SERVICES

The *NOI* seeks comment on whether the Commission should modify its previous conclusion that fixed and mobile broadband services are not substitutable.[20] On a theoretical basis, fixed and mobile broadband services *of similar functionality* could be substitutes for each other, and changes in marketplace and technological conditions *could* justify a different evaluative approach.[21] The lynchpin, however, is comparable functionality. Not only has the Commission found establishment of a single mobile speed benchmark "unworkable,"[22] but on a substantive level, median mobile download speeds are less than half the fixed wireline benchmark.[23] Similar functionality would also compel congruent latency and usage limitations, all at comparable consumer price points.[24] Therefore, ITTA submits that, absent comparable functionality of wireless services, fixed and mobile broadband services remain not substitutable, and that the Commission should evaluate the deployment of advanced telecommunications

[19] ITTA CAF II Weights Comments at 8 (quoting *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6111, Statement of Commissioner Michael O'Rielly Approving in Part and Dissenting in Part (2016)).

[20] *See NOI* at 4, para. 10.

[21] *2019 Report*, 34 FCC Rcd at 3861, para. 11.

[22] *NOI* at 4, para. 12 (citing *2019 Report*, 34 FCC Rcd at 3863, para. 16).

[23] *See id.* at 4-5, para. 12.

[24] Although ITTA advocates here a "comparable" or "similar" functionality approach towards assessing substitutability, and recognizes that the Commission declined in the *2019 Report* to expand the metrics evaluated in the annual broadband progress report proceedings, *see 2019 Report* at 3865-66, para. 19, ITTA would not object to the Commission supplementing the metrics it analyzes in the annual broadband progress report proceedings.

capability based on the presence of fixed and mobile services "both individually and in conjunction with one another" just as it did in the *2019 Report*.[25]

IV. UNDER THE *NOI*'S PROPOSED FRAMEWORK FOR ANALYSIS OF PROGRESS IN DEPLOYMENT, THE COMMISSION MAY FIND THAT BROADBAND IS BEING DEPLOYED IN A REASONABLE AND TIMELY MANNER

In the *2019 Report*, the Commission continued its use of a progress-based approach to analyze deployment of fixed and mobile services.[26] The *NOI* proposes to again use this progress-based approach for the next broadband deployment report.

The roster of Commission actions since release of the *Fourteenth NOI* in 2018, and thus far in 2019, is impressive. At the end of 2018, the Commission adopted separate budgets for the two rate-of-return support programs. In so doing, the Commission took significant steps to stabilize the legacy rate-of-return broadband support mechanisms, and "fully funded" A-CAM support mechanisms in return for significantly increased commitments to deploy broadband at 25/3 Mbps speeds. At the same time, the Commission extended a second offer for legacy carriers to accept A-CAM support in exchange for substantial deployment obligations to a pre-determined number of eligible locations at 25/3 Mbps speeds.[27] With 171 rate-of-return companies having accepted the offer,[28] the two A-CAM programs collectively will subsidize broadband deployment to over 1.1 million locations, with, at a minimum, nearly 815,000 of them at speeds of 25/3 Mbps.

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[25] *See 2019 Report*, 34 FCC Rcd at 3862, para. 11.

[26] *See, e.g., id.* at 3859, para. 8.

[27] *See generally Rate-of-Return Budget Order*.

[28] *See Wireline Competition Bureau Authorizes 171 Rate-of-Return Companies to Receive $491 Million Annually in Alternative Connect America Cost Model II Support to Expand Rural Broadband*, Public Notice, 34 FCC Rcd 7271 (WCB 2019).

Further, the Commission completed the CAF II auction, in which bidders won support to deploy broadband to over 700,000 locations at less than 30 cents on the dollar relative to the funds the Commission had reserved for CAF II auction support, and with over 99 percent of auction-supported deployments to be at speeds of 25/3 Mbps or greater. Over the course of 2019, the Commission thus far has authorized seven waves of funding, totaling over 80 percent of the $1.488 billion in winning CAF auction bids, and nearly 60 percent of the CAF II auction-supported locations.[29] The Commission also has taken concrete steps towards initiating another auction, the RDOF, to make available over $20 billion to connect around four million rural homes and small businesses to high-speed broadband networks.[30]

Aside from funding commitments, the Commission in other considerable respects has advanced the ball towards the statutory goal of deployment of advanced telecommunications capability to all Americans, in a manner that fosters service performance that indeed is capable. It launched the Digital Opportunity Data Collection, which promises more granular data on broadband deployment as well as, critically – if the Commission adopts the Broadband Serviceable Location Fabric (Fabric)[31] – a full national accounting of locations still yet to benefit from advanced telecommunications capability. In addition, in recent weeks, the Commission resolved numerous issues related to its broadband performance measurements framework, enhancing the framework's flexibility to meet the practicalities of network deployment in varied circumstances while promoting rigorous testing requirements that ensure providers receiving

[29] *See, e.g.*, Press Release, FCC, FCC Authorizes Over $61.8 Million in Funding for Rural Broadband; Sixth Round of Funding from Connect America Fund Auction Starts This Month and Includes 14 States (Oct. 10, 2019), https://docs.fcc.gov/public/attachments/DOC-360165A1.pdf.

[30] *See generally RDOF NPRM*.

[31] *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505, 7545-49, Sec. IV.A.3. (2019).

USF support deploy networks that meet the performance standards they promised to deliver.[32] And within the past year, the Commission completed or took significant steps towards several auctions devoting large swaths of spectrum for wireless broadband deployment, which "will help ensure continued American leadership in wireless broadband."[33]

In light of all the foregoing, the Commission has ample grounds to once again find that its "policymaking efforts . . . are promoting broadband deployment, and that [Internet Service Providers] are making strong progress in deploying advanced telecommunications capability to more and more Americans."[34]

V. EVEN WITH A FINDING OF REASONABLE AND TIMELY DEPLOYMENT, THE COMMISSION MUST CONTINUE VIGOROUS EFFORTS TO ACCELERATE BROADBAND DEPLOYMENT

As described by the *NOI*, although the *2019 Report* found that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion, it "also recognized that [the Commission's] work to close the digital divide [is] not complete," and that further deployment of advanced telecommunications capability must remain a top priority as the Commission continues its efforts to help deliver the benefits of broadband to all Americans.[35] ITTA wholeheartedly endorses this corollary to the Commission's "progress-based approach" towards evaluating the reasonableness and timeliness of broadband deployment.

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[32] *See generally Connect America Fund*, Order on Reconsideration, FCC 19-104 (Oct. 31, 2019).

[33] *Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz); Bidding in Auction 101 Scheduled to Begin November 14, 2018*, Public Notice, 33 FCC Rcd 7575, 7577, para. 1 (2018). *See also id.* at 7672, Statement of Commissioner Brendan Carr ("what this [auction] means for our country in plain terms is more broadband").

[34] *2019 Report*, 34 FCC Rcd at 3899, para. 78.

[35] *NOI* at 2-3, para. 5 (citing *2019 Report*, 34 FCC Rcd at 3896-99, paras. 76-79).

Above, ITTA describes myriad actions the Commission has taken or initiated since issuance of the *Fourteenth NOI* to foster broadband deployment.[36] Although in most cases it is too early in the implementation cycles to evaluate actual deployment results from these programs, efforts are well underway and advancing apace. Apart from expeditiously adopting and initiating formulation of the Fabric, which will confer a comprehensive accounting of where to find locations that do not yet have available advanced telecommunications capability -- and thereby helping to inform the most effective methods for spurring deployment to these locations – as the Commission awaits ripening of the deployment fruits of its recent funding programs, there are two steps it should take to ensure that capital earmarked for broadband deployment does not succumb to a deep freeze.

First, on the heels of the Commission's recent disposition of how to address discrepancies between the number of funded locations and the number of actual locations in the CAF II auction context,[37] there are still similar issues pending in the A-CAM context.[38] Until the Commission offers guidance, many providers are exercising considerable caution, setting aside substantial sums that they otherwise would devote towards broadband deployment, in order to protect against the unfortunate event of the Commission extracting undue subsidy reimbursements on account of deployment shortfalls relative to buildout obligations where the locations simply do not exist.[39] Resolving these issues in the manner ITTA has advocated will unshackle these sums

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[36] *See supra* Sec. IV.A.

[37] *See Connect America Fund*, Order, DA 19-1165 (WCB Nov. 12, 2019).

[38] *See Wireline Competition Bureau Issues Corrected Alternative Connect America Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, Public Notice, 34 FCC Rcd 4342 (WCB 2019); *Comments Sought on Petition for Declaratory Ruling of Northeast Iowa Telephone Company and Western Iowa Telephone Association*, Public Notice, 34 FCC Rcd 5092 (WCB 2019).

[39] *See, e.g.*, ITTA Comments, WC Docket No. 10-90, at 3-4 (July 19, 2019) (pro rata reduction in support is inappropriate where recipients of A-CAM support find location discrepancies);

(continued…)

and permit their allotment towards additional broadband deployment. Second, just today, the Commission adopted an order and further notice that, absent establishment of an adequate reimbursement program, could lead to rural providers being constructively or actually forced to allot millions of dollars to replace equipment and services previously procured from vendors now deemed to pose a national security risk to communications networks.[40] Inevitably, diversion of such sums by rural providers just to maintain the status quo of their networks will cannibalize capital which otherwise could be utilized to expand them.

VI. CONCLUSION

The Commission should stay the course it followed in formulating the *2019 Report*, conducting its analysis utilizing a 25/3 Mbps speed benchmark. In addition, unless evaluating mobile broadband services with comparably robust parameters as to speed, latency, usage limitations, and price, the Commission should continue examining the availability of fixed and mobile broadband service both individually and in conjunction with each other. With these parameters and the progress-based framework of analysis that the Commission applied in the *2019 Report* and proposes to do so again in this proceeding, the Commission may find that the rate of broadband deployment in rural areas militates towards the conclusion that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. Because over 21 million Americans still lack broadband access, however, the Commission must, as it explicitly recognizes, continue to arduously pursue actions to foster

(Continued from previous page)
ITTA Comments, WC Docket No. 10-90 (July 10, 2019) (home-based businesses should qualify as separate locations for purposes of assessing compliance with deployment obligations).

[40] *See* Press Release, FCC, FCC Bars Use of Universal Service Funding for Equipment & Services Posing National Security Risks; Proposes Process for Removing Prohibited Equipment Already in USF-Funded Networks (Nov. 22, 2019), https://docs.fcc.gov/public/attachments/DOC-360976A1.pdf; *see also Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Report and Order, Order, and Further Notice of Proposed Rulemaking, FCC-CIRC1911-01 (Public Draft Oct. 29, 2019).

broadband deployment, as well as ensure those actions it already has taken are not derailed by continuing regulatory uncertainty or unfunded mandates that force diversion of funds just to maintain networks' status quo.

Respectfully submitted,

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